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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,751	11/12/2003	Jean-Laurent Wilson	400400	7550

7590 06/23/2005  
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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/706,751	Applicant(s) WILSON, JEAN-LAURENT	
	Examiner Yvonne M. Horton	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 7-14 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/28/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 17 is objected to because of the following informalities: Claim 17 includes an improper Markush grouping. The proper grouping must be --the group consisting of a,b, or c--. Hence the claim should be amended to add --or--. Appropriate correction is required.

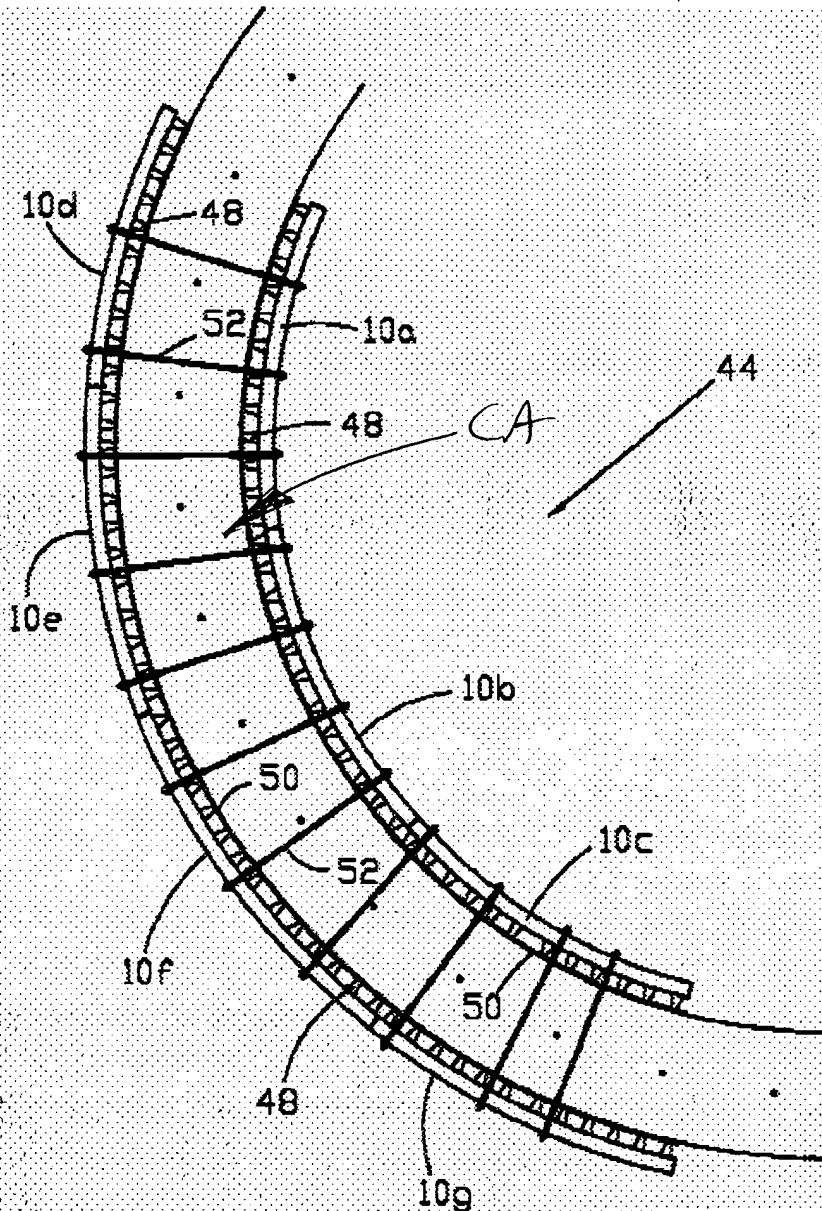
### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

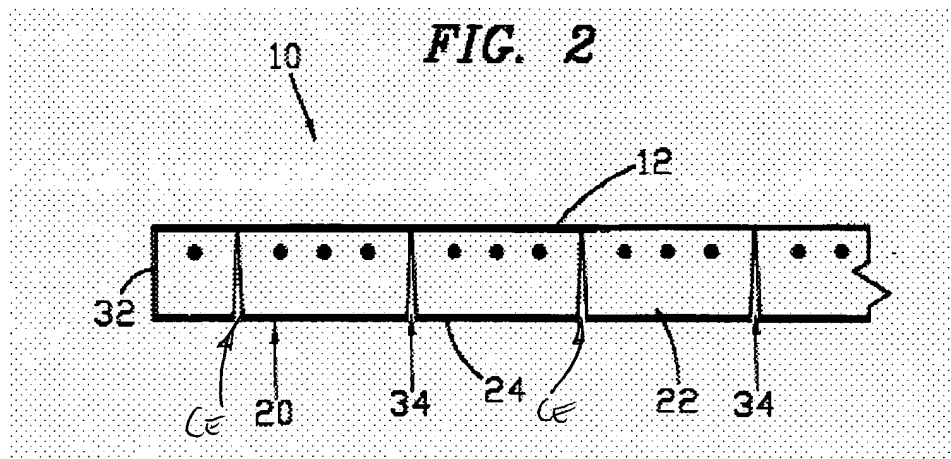
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,15, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,806,266 to JENNINGS et al. JENNINGS et al. discloses the use of a structure (44) for forming a vertically oriented wall including a flexible front panel (10d-g) and a flexible rear panel (10a-c) connected by a plurality of cross members (52) thereby forming a cavity (CA), see the figure below, for accepting



filler material therein, column 1, lines 65-67, such that rear panel (10a-c), at least includes a deformable portion (34) which allows for the rear panel (10a-c) to deform and adjust to form an arcuate configuration. Regarding claim 2, the at least one deformable portion (34) is laterally expandable to form a concave front wall, see figure 5. In reference to claim 3, the at least one deformable portion (34) is also laterally

contractible which allows for the front wall (10d-g) to be convex. Regarding claim 4, the at least one deformable portion (34) includes opposing channel edge sections (CE), see the marked figure below, that define a rearward facing channel (34). In reference to



claim 5, The opposed channel edge sections (CE) are adjacent when the wall structure is straight, see figure 2. Regarding claim 6, the deformable portions (34) includes opposing channel edge sections (CE), see the marked figure above, that define a rearward facing channel (34) wherein the sections (CE) are spaced apart when in a straight configuration, see figure 2, but allows for the distance there between to contract for a convex wall or expand for a concave wall. In reference to claim 15, the structure (44) includes at least one horizontal strap member (36) secured laterally across the structure (44) to secure the structure (44) in an arcuate configuration. Regarding claim 17, the filler material consists of concrete (column 1, lines 65-67). In reference to claim 18, the deformable portions (34) are positioned between the cross members (52). Regarding claim 19, the structure (44) of JENNINGS et al. includes a plurality of deformable portions (34).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,806,266 to JENNINGS et al. JENNINGS et al. discloses the basic claimed structure except for teaching the use of forming the device from a polypropylene material. Although JENNINGS et al. does not disclose this, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a known material on the basis of its suitability for the use intended as an obvious matter of design choice. For instance, plastic is much lighter in weight than metal and usually costs less. Also, a plastic form might prove desirable in an environment where there may be more moisture than usual, and a metal form would be appropriate in environments that are known to be fairly dry because exposing metal to moisture destroys the form and cuts back on the life of the device due to a higher chance of corrosion.

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***Allowable Subject Matter***

Claims 7-14 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
Examiner  
Art Unit 3635  
6/14/05